COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

INVESTIGATION BY THE DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY ON ITS OWN MOTION REGARDING THE SEVICE QUALITY GUIDELINES ESTABLISHED IN SERVICE QUALITY STANDARDS FOR ELECTRIC DISTRIBUTION COMPANIES AND LOCAL GAS DISTRIBUTION COMPANIES, D.T.E. 99-84 (2001)	))))))))	D.T.E. 04-116

INITIAL COMMENTS OF KEYSPAN ENERGY DELIVERY NEW ENGLAND

I. INTRODUCTION

On December 13, 2004, the Department of Telecommunications and Energy (the "Department") voted to open an investigation into the quality of service provided by gas and electric distribution companies in the Commonwealth (the "LDC's"). The purpose of the investigation is to review the service quality guidelines (the "SQ Guidelines") adopted by the Department in Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies, D.T.E. 99-84 (2001) (the "SQ Order").[1] To further its investigation, the Department solicited comments on ten particular provisions of the current SQ Guidelines.

---

[1] Following the SQ Order, the Department approved individual SQ plans for each of the LDC's. These plans had a three-year term commencing on January 1, 2002. In the SQ Order at 42, the Department indicated its intent to review the SQ Guidelines and the LDC SQ plans at the expiration of the three-year term. Although the LDC Plans expired on December 31, 2004, the Department's notice provides that the plans approved pursuant to the SQ Order are to remain in effect until the Department issues a final order in this proceeding.

KeySpan Energy Delivery New England[2] ("KeySpan" or the "Company") is pleased to provide its comments on those topics that apply to local gas distribution companies. KeySpan and the other Massachusetts gas LDCs considered the Department's request for joint comments where feasible, and although it was determined that the LDCs would file individual comments, those comments have been coordinated to the extent that there was agreement on specific topics.

II. EXECUTIVE SUMMARY

The Department has long acknowledged that the purpose of a well designed SQ Plan, particularly for an LDC operating pursuant to a PBR Plan or merger rate plan that otherwise provides a financial incentive to reduce costs, is to ensure that there is no degradation in the quality of service provided by the LDC.[3] Although the Department encourages LDC's to seek ways to improve the level of service to customers, improvement to the level of service historically achieved should not be required to avoid a financial penalty.[4] The Department's SQ Guidelines, which measure an LDC's annual service quality against historic benchmark levels of service quality provided by the LDC, are reasonably designed to achieve the Department's stated objective. Accordingly KeySpan would support re-adoption of the SQ guidelines without change.

However, to the extent that the Department determines that modifications are appropriate, KeySpan would encourage the Department to consider two specific changes to the manner in which the deadband around the Company's performance benchmarks are

---

2 The Massachusetts LDCs that do business under the name of KeySpan Energy Delivery New England are: Boston Gas Company, Colonial Gas Company and Essex Gas Company.

3 See, Service Quality Standards for Electric Distribution Companies and Local Gas Distribution Companies, D.T.E. 99-84, (letter order dated April 17, 2002 at 4); Boston Gas Company, D.T.E. 03-40 at 504, (2003); Boston Gas Company, D.P.U. 96-50 (Phase I) at 304, (1996); Boston Gas Company, D.P.U. 96-50 – C at 61-62 (1997); NYNEX, D.P.U., 94-50 at 235 (1994).

calculated. The first change would address the lack of symmetry on measures where a utility's performance is relatively high, and as a result the upper threshold of the deadband nears or exceeds the 100% mark. In these instances the Company cannot achieve all or part of an otherwise available offset for superior performance but remains subject to 100% of the potential penalty for that performance measure should it fall short of the performance benchmark. The second change would establish minimum deadbands around performance benchmarks with little or no variation in historical performance from year to year. Otherwise, over time, for certain measures, the deadband can become so tight that slight variations in performance that reflect no change in the actual quality of service being provided can subject the Company to a maximum penalty for the measure; or conversely, entitle the Company to a maximum credit offset for the measure. In either case, the result would be inappropriate. Each of these potential modifications is discussed in detail in section III 1.C below.

Finally, KeySpan recommends that those LDCs that operate within a holding company structure, such as the KeySpan LDCs, be allowed to combine the operations of the individual LDCs into a single SQ Plan for purposes of measuring the quality of service provided to customers. It would be incumbent upon KeySpan, or any other LDC proposing such a combined SQ Plan, to demonstrate that sufficient data for the combined performance exists to properly measure historical performance and that the benchmarks established for the combined performance will not result in degradation of service to customers.

---

4 Boston Gas Company, D.P.U. 96-50-C at 61-62 (1997).

III DISCUSSION OF TOPICS FOR INVESTIGATION

1. Offsets: *Currently, if an LDC incurs a potential penalty for substandard performance in a penalty provision measure, the Guidelines allow that LDC to offset that penalty if the LDC exceeded its benchmark in other penalty provisions. Please discuss whether the offset provision offers an incentive for an LDC to improve SQ and whether the use of penalty offsets should be continued in the future Guidelines.*

The offset component of the service-quality penalty mechanism serves two important functions and should be continued in future Guidelines. First, the Department adopted the offset component for a specific purpose, i.e., to address concerns regarding the mathematical underpinnings of the standard-deviation calculation used to establish performance deadbands. Second, the offset component provides an incentive to improve service quality, even though the incentive is not strictly monetary. Both of these points are discussed in detail below.

A. The Underlying Need for the Offset Component Remains Unchanged

Early in the Department's efforts to devise a generic service-quality measurement system, the Department identified the need to establish a "deadband" around a utility's historical average performance to differentiate normal year-to-year variations in utility performance from actual degradations in service, before penalties would be assessed.[5] Normal year-to-year variations in performance occur because weather, price volatility, economic cycles and a range of other external factors beyond the control of management

[5] D.T.E. 99-84, at 47 (August 17, 2000) (the "Interim Order")

have an impact on the level of service required by customers at any given time.[6] For example, extremely cold or stormy weather can cause service outages and can generate a substantial increase in the numbers of customers calling the company and/or requesting service visits.[7] Because the utility cannot always foresee these events, the utility has no ability to control or avoid variations in performance on a year-to-year basis.[8]

The utility's inability to control for these external factors is important because the Department has founded the penalty mechanism on the underlying premise that management has control over the level of service-quality provided to customers and that the imposition of penalties will influence management decisions on service-related issues.[9] In that regard, the Department has stated that the purpose of SQ penalties is to "provide an impetus for gas and electric companies to conduct themselves in such a way that there is no need to impose monetary penalties in the first place."[10] The Department has also stated that "companies seeking to avoid penalties have a readily available remedy, which is to "conduct their business in a manner that maintains SQ measures and avoids the imposition of penalties.[11] Thus, a critical underpinning of the overall service-quality program is that utilities will be assessed penalties only where (1) there is a level of certainty that service has actually degraded below historical levels[12] and (2) the degradation in service is under the control of management.[13] Accordingly, the inclusion

---

6 Interim Order at 47; D.T.E. 99-84, at 27.

7 See, id.; Initial Joint Comments of Utilities at 23-24, Appendix B at 3-5 and 6-7 (filed November 10, 2000) ("Initial Comments"); Supplemental Joint Comments of Utilities at 4 (filed June 6, 2001) ("Supplemental Comments")

8 Id.

9 D.T.E. 99-84, at 29; Interim Order at 44-47, 49 at fn.37.

10 D.T.E. 99-84, at 29, fn.27.

11 Id., at 29.

12 (Interim Order at 43, 47)

13 Interim Order at 49; D.T.E. 99-84, at 2, 5, and 29, fn.27.

of deadbands in the overall design of the penalty structure is explicitly intended to ensure that utilities are not penalized for events or circumstances that have a negative impact on service-quality performance, but are not caused by the utility, nor are under the utility's control.[14] To establish the deadband, the Department adopted the approach of computing a "standard deviation" using the utility's own, available historical performance data.[15] Standard deviation is a mathematical construct that measures the amount of variation in a data set based on the collective difference between the individual data points and the average (or mean) of the data set.[16] However, the record in D.T.E. 99-84 was clear and comprehensive on the point that standard deviation is not a statistically valid concept where there are relatively few available data points (i.e., less than 30). This is because there is little statistical confidence that the (limited) data set encompasses the performance data points that the utility would normally record under the full range of external factors affecting the utility's operations.[17]

If the actual variability of a utility's performance data is not captured in the standard-deviation calculation, there is an increased possibility that the utility will be penalized for performance that simply varies from the historical average rather than representing a deterioration of service.[18] In adopting the standard deviation approach, the Department explicitly recognized that the use of "company-specific historical data" would "necessarily result in sample sizes of ten [years] or less." In addition, the

---

14 This is referred to as a "Type 1" error. A "Type 1" error occurs when a utility is penalized for a measurement that deviates from the historical benchmark and the deviation is a result of random variation in the data rather than an actual deterioration in the service-quality efforts of the utility. D.T.E. 99-84, at 27, fn. 24.

15 Id., at 3.

16 See, D.T.E. 99-84, at 23-26. See, Joint Initial Comments of the Utilities at 25, Appendix B at 9-12, 21-22; Joint Supplemental Comments at 5-7.

17 D.T.E. 99-84, at 22; Supplemental Joint Comments of the Utilities at 6, citing Statistical Concepts and Methods, G. Bhattacharyya and R. Johnson (1977).

Department noted the "statistical probability that the standard deviation approach will result in a 16 to 18 percent chance of Type I errors," in light of the limited available data. Accordingly, the Department found that:

> In order to provide an additional safeguard against the probability of a company being subject to a SQ penalty for random variations in performance, the Department shall incorporate an "offset" feature to the penalty mechanism. . . . The Department considers a standard deviation approach that includes a system of monetary offset credits best achieves our goal of balancing the risk of Type I errors with the risk of Type 2 errors.[19]

With only three additional data points in hand since the conclusion of the D.T.E. 99-84 proceeding, the concerns over the accuracy of the deadband calculation have not been abated. Therefore, in determining whether offsets should be included in future guidelines, it is important to give consideration to the overarching design and operation of the service-quality program as it was initially conceived and implemented by the Department in D.T.E. 99-84.

B. The Offset System Provides an Incentive to Improve Service

In addition to providing a safeguard against inappropriate penalties, the offset provision provides an incentive to improve performance. There are two main reasons that this incentive exists. First, the offset provision is effective in signaling above-average performance to employees, customers, shareholders and the Department. Although the primary (and statutory) purpose of the service-quality program is to ensure against a degradation of service under a performance-based rate plan or merger-related rate plan, KeySpan uses the service-quality requirements to set internal goals for measuring

---

[18] Id. at 22-23

company performance. Service-quality targets are communicated throughout the companies and, as a result, the Company is able to provide verifiable and objective information to employees, on both the successes and challenges, including the financial consequences to the Company, of providing service to customers. Therefore, the offset system serves an important function in allowing the Company to appropriately incent employee behavior.

Second, the offset component serves an important function in counterbalancing an idiosyncrasy of the Department's benchmark system. Specifically, an issue arises under the Department's current benchmark system because the historical average and standard deviation for benchmarking are based on a utility's ten most recent years of data.[20] Therefore, if a utility has 10 years of data available for a particular measure, the benchmark is fixed for the "duration of the PBR."[21]. However, if the utility has less than 10 years of data available, new performance data is rolled in to the historical average on a year-to-year basis until such time that 10 data points are incorporated into the benchmark.[22] The dynamic that occurs with the continual incorporation of new performance data is that the benchmark may be raised above historical levels in circumstances where the utility has greatly improved its service after the commencement of the SQ Plan. With an ever-increasing benchmark, there is the potential that a utility could be penalized for service that falls below the new deadband threshold, but in fact, is

---

19 A "Type 2" error occurs when a degradation of service occurs but goes undetected and un-penalized. D.T.E. 99-84, at 27, fn. 24 and at 28.

20 Service Quality Guidelines at Section I.C (hereinafter, "SQ Guidelines").

21 Id.

22 Id.

at a level that exceeds the level of service provided to customers at the outset of the PBR Plan.[23]

In light of this dynamic, the offset component of the penalty becomes extremely important because it provides an opportunity for the utility to offset penalties that may result from this dynamic with improved performance on other measures.

C. Corrections to the Deadband Calculation within the Current Offset System

There are two corrections to the Department's deadband construct that should be given some consideration. First, the offset system is not symmetrical on measures where a utility's performance is relatively high, and as a result, the upper threshold of the deadband nears or exceeds the 100 percent mark. In these instances, the utility cannot achieve all or part of an offset because the offset crosses over the 100 percent mark; however the utility is subject to 100 percent of the potential penalty. Thus, if the deadband does not accurately capture the full range of variability in performance data that the utility would experience in the normal course of operations, the utility could be penalized inappropriately and the coinciding offset to balance that risk is not available for that measure.

One example is Billing Adjustments. In this example, the Boston Gas benchmark is set at $155.83 per 1,000 residential customers with a standard deviation of $180.55 per 1,000 residential customers. In this case, no offset is available because the Company would have to reduce billing adjustments to a negative $24.72 per 1,000 customers in order to exceed the deadband threshold and obtain the coinciding offset. Accordingly, the utility is subject only to penalties and has no offsets available to act as the safeguard

[23] Id.

against the possibility that the standard-deviation computation is based on too few data points, and therefore, fails to capture the level of variation in the performance data that the utility actually will experience over time through no fault of its own.

To resolve this dilemma, the Department should consider pro-rating the maximum offset that would be available under a symmetrical system over the potential performance range between the deadband threshold and 100 percent performance.

Second, for performance measures where there is typically little or no variation in the annual level of service provided, the deadband construct is ineffective in protecting the Company or customers from insignificant fluctuations in performance that do not represent a material difference in the Company's performance. For example, Essex Gas Company's calendar year 2003 compliance filing indicated that for the emergency telephone service factor the mean performance for calls handled within 40 seconds was 96.88%. The credit benchmark level was 97.26% and the penalty benchmark was 96.49%. With an actual performance of 96.14%, which essentially represents the same excellent service historically provided to customers, Essex showed a penalty performance for that measure of $33,588.00.[24] Had Essex handled an additional 24 calls, out of the total of 6,552 total emergency calls received, in the required 40 seconds there would have been no penalty. And, had Essex handled an additional 25 calls in the required 40 seconds it would have been entitled to a credit performance. Such change in performance is insignificant in terms of the level of service being provided and does not justify the imposition of a substantial financial penalty or financial reward. To remedy this situation, the Department should consider establishing a minimum performance deadband of plus or minus 1% for all performance measures.

2. Odor Calls: *Currently, the benchmark for odor calls is 95 percent, which is an obtainable goal of all gas LDCs. Please discuss whether this benchmark should be strengthened in the future Guidelines and SQ plans and whether multiple calls regarding a single gas leak should be considered as a single odor call response.*

In the local natural gas distribution industry, there is no higher priority than responding to odor calls as quickly as possible. Therefore, it is not surprising that the 95 percent benchmark is "obtainable" by LDCs. In that regard, the existing "95 percent" benchmark for responding to odor calls is an appropriate standard because (1) all of the LDCs' historical performance data is based on this standard; (2) the standard is generally accepted throughout the gas industry; and (3) the standard has ensured the safe and reliable delivery of gas to customers in the Commonwealth since its adoption by the Department in D.T.E. 99-84. Moreover, the fact that a particular service-quality goal is "obtainable" is not a basis for setting a higher performance benchmark, unless the main objective of the higher benchmark is to create a greater potential for the utility to be penalized. Accordingly, the existing standard should be continued in future guidelines.

In D.T.E. 99-84, the Department stated that "public safety concerns make it essential for gas distribution companies to achieve and maintain a high performance standard for odor call response times."[25] Therefore, the Department explicitly rejected the use of a company's historical performance in computing the deadband and set a

[24] The penalty was offset by above benchmark performance in other measures.
[25] D.T.E. 99-84, at 39

uniform "95 percent" standard for all gas companies operating in the Commonwealth.[26] This determination reflected that fact that most, if not all, of the Massachusetts LDCs had been measuring response times in accordance with this standard for several years prior to the Department's generic proceeding in D.T.E. 99-84, and therefore, the standard was consistent with the historical data maintained by the companies. Moreover, this standard is generally accepted in the gas distribution industry.[27] As a result, it was reasonable and appropriate for the Department to establish the 95 percent benchmark on a statewide basis in D.T.E. 99-84.

As noted above, the fact that a particular service-quality goal is "obtainable" is not a basis for setting a higher performance benchmark. There is no indication that leak-call response times are too long because the 95 percent is "obtainable," and is, therefore, causing harmful impacts to the public safety and welfare. There has been no instance where the utility's response to an odor call in conformance with the standard has resulted in a gas incident causing personal injury or harm to property. As demonstrated by the performance statistics reported by the LDCs over the past three years, the LDCs are diligent in their efforts to respond to gas odor calls as quickly as possible, and as a result have consistently exceeded the 95 percent benchmark. Accordingly, there is no substantive basis to suggest that a change is necessary or warranted to address a public safety concern.

The Department has previously stated that, "the purpose of SQ penalties is not to maximize the level of penalties collected, but to provide an impetus for gas and electric companies to conduct themselves in a way that there is no need to impose monetary

---

[26] Id.; D.T.E. 99-84-B at 7

penalties in the first place."[28] The performance statistics of the gas companies confirm that the 95 percent benchmark has provided a strong "impetus" for gas companies to conduct their operations in a manner that should occur even without the Department's service-quality penalty mechanism. Thus, in addition to being consistent with industry practice and imposing a uniformly high standard on all gas companies, the Department's 95 percent benchmark has achieved the precise objective that the Department identified in initiating the service-quality program. Accordingly, no change to the standard is necessary or warranted in future guidelines.

With regard to the second part of the Department's question, as a matter of Company policy and public safety, KeySpan investigates every odor call received. However, if a KeySpan representative on site confirms that more than one call has been received for the same odor source, the duplicate call is excluded from the measure calculation. However, the Company does not exclude calls related to the same leak when received from different address. This is because each such call must be individually investigated before the duplicity can be confirmed. Finally, the Company does not exclude repeat calls from the same address because it must investigate the second call to determine if the condition has changed from the time of the initial investigation. Thus, there are instances where multiple calls regarding a single gas leak may be appropriately tracked as a distinct work order. However, these instances are rare. Accordingly, no change to the guidelines is warranted or necessary.

---

27 See, e.g., The Massachusetts Electric and Gas Distribution Companies, *Summary of Findings Related to Service Quality Benchmarking Efforts* at 7 (filed with the Department on December 19, 2002

28 D.T.E. 99-84, at 29, n. 27

3. Staffing Levels: *G.L. c. 164, § 1E (a) requires the Department to establish benchmarks for staff and employee levels of LDCs, and G.L. c.164, § 1E (b) requires that no company may reduce its staffing levels below what they were on November 1, 1997. However, the statute does not define what staffing levels are, e.g., whether they apply only to union employees or to all employees; whether staffing levels should include employees of non-regulated subsidiaries of the LDCs; and whether the lapse in time (between enactment of the statute and adoption of a performance-based rate plan) negates the November 1, 1997 requirement. Further, the statute does not provide for any penalty for the LDCs that do reduce their staffing levels below 1997 numbers. Please discuss the role of staffing levels in the future Guidelines.*

The Department's current system of monitoring staffing and service-quality levels fulfills the statutory mandate set forth in G.L. c. 164, § 1E (a) and, therefore, no change is necessary in future Guidelines. To meet the requirements of the statute, the Department has established a three-tiered structure involving: (1) a comprehensive service-quality program to detect and penalize companies for degradations in service,[29] (2) the establishment of a benchmark staffing level as of November 1, 1997 and annual reporting of staffing levels in each year thereafter,[30] and (3) a formal investigation into the causes and circumstances of a service decline in any case where performance falls below the established guidelines[31]

29 (SQ Guidelines at VII)
30 (SQ Guidelines at IV)
31 (SQ Guidelines at VII A).

This structure satisfies both the stated and implied requirements of Section 1E (a) because it recognizes that there is not necessarily a direct correlation between service-quality levels and reduced staffing and, therefore, the trigger for Department action is a demonstrated decline in service quality, rather than a change in staffing levels. In addition, the Department's system is a reasonable approach to resolve the inherent tension between the underlying purpose of PBR, i.e., to maximize efficiency gains and cost reductions, and the need to ensure that staffing levels are adequate to maintain the quality of service for customers.

A. Statutory Requirements

To determine both the explicit and implicit requirements encompassed in G.L. c. 164, § 1E (a), it is important to consider the language of the statute within the context of the regulatory scheme the Department has established for distribution companies operating in the Commonwealth. In that regard, Section 1E(a) states in relevant parts that:

> (a) The [D]epartment is hereby authorized to promulgate rules and regulations to establish and require performance based rates for each [gas company]. . . . In promulgating such performance based rate schemes**,** the department shall establish service quality standards for each [company]. . . . [S]uch service quality standards shall include benchmarks for employee staff levels . . . .
>
> (b) In complying with the service quality standards and employee benchmarks established pursuant to this section, a [company] that makes a performance based rate filing after the effective date of this act shall not be allowed to engage in labor displacement or reductions below staffing levels in existence on November 1, 1997, unless such are part of a collective bargaining agreement or agreements between such company and the applicable organization or organizations representing such workers, or with the approval of the Department following an evidentiary hearing at which the burden is on the company to demonstrate that such staffing reductions shall not adversely disrupt service quality standards as established by the department herein.

G.L. c. 164, § 1E.

Thus, as an initial matter, §1E (a) does not impose the unqualified rule that "no company may reduce its staffing levels below what they were on November 1, 1997," as suggested by the question. Rather, the statutory language explicitly establishes the following:

a. The Department may establish PBR plans for companies under its jurisdiction;

b. For companies commencing PBR plans after November 25, 1997 (i.e., the effective date of the Act), the Department must establish service-quality standards;

c. The Department's PBR-related service-quality standards must include a staffing level "benchmark," established as of November 1, 1997;

d. A company operating under a PBR plan that commenced after November 25, 1997 may reduce staffing levels from the November 1 level, if: (1) those reductions are part of a collective bargaining agreement(s); or (2) the utility can demonstrate that service quality is not adversely affected;

Based on the efforts commenced by the Department following the enactment of the Restructuring Act, the Department has fulfilled each of these four requirements. Specifically, the focus and intent of the Department's generic proceeding in D.T.E. 99-84 was to develop guidelines for SQ measures to be included in PBR plans submitted by gas

and electric companies pursuant to Section 1E (a).[32] As a result, the Department's SQ Guidelines satisfy the first and second requirements set forth above.

Further, as part of its clarification order in D.T.E. 99-84, the Department directed distribution companies to submit SQ plans with staffing level benchmarks based on staffing levels in existence on November 1, 1997, except as provided by collective bargaining agreements or other statutory provisions.[33] The reporting of staffing levels on an annual basis beginning November 1, 1997 addresses the third requirement set forth above.

With respect to the last requirement, the statute provides that staffing levels may be reduced if (1) accomplished pursuant to a collective bargaining agreement; and (2) if the utility demonstrates that reductions have not affected service quality. In that regard, the Department has stated that staffing levels will be determined consistent with §1E (b), primarily by collective bargaining agreements, and on a case-by-case basis.[34] The Department's findings on this point are appropriate because the existence of a collective-bargaining agreement is prima facie evidence that bargaining-unit staffing reductions are being implemented by a company as part of the agreement. No further action by the Department is necessary, warranted or appropriate in relation to bargaining-unit staffing levels.

Aside from collective bargaining agreements, the statute allows utilities operating under PBR to reduce staffing levels where there is a demonstration that the reductions will not affect service quality. With the SQ Guidelines in place, the Department is able to monitor the interrelation between service-quality levels and staffing levels without

---

32 D.T.E. 99-84, at 40

33 Order on Clarification, D.T.E. 99-84-B, at 12-13 (2001)

inhibiting a utility's ability to make staffing decisions aimed at streamlining and maximizing the efficiency of its operations. The Department is also able to detect and penalize companies for deficient service quality and to investigate whether staffing levels are a contributing factor to the service deficiency. Accordingly, the framework established in the Department's existing Guidelines fulfills the final requirement of §1E (a).

B. Response to the Department's Specific Questions on Staffing Benchmarks

The question posed by the Department in this proceeding asks for specific input on the following points: (1) the statute does not define what staffing levels are, e.g., whether they apply only to union employees or to all employees; (2) whether staffing levels should include employees of non-regulated subsidiaries of the LDCs; (3) whether the lapse in time (between enactment of the statute and adoption of a performance-based rate plan) negates the November 1, 1997 requirement; and (4) the statute does not provide for any penalty for the LDCs that do reduce their staffing levels below 1997 numbers. All of these issues are addressed with the Department's existing SQ Guidelines given its emphasis on (1) the measurement and quantification of service-quality performance in comparison to historical performance data; and (2) the identification of a decline in service quality as a prerequisite to an investigation into the reasons for that service decline, including reduced staffing levels.

Specifically, it is important to consider that the underlying concern of the statute, as well as the Department's efforts on PBR, is that there should be no decline in service quality as a result of a utility's cost-cutting efforts.[35] Because it is really the decline in service quality that is the concern, it is not reasonable to establish staffing level

---

[34] D.T.E. 99-84-B at 12

reductions as the trigger for an investigation into the impact of those reductions. Rather, to be consistent with the fundamental purpose of PBR, the appropriate trigger for an investigation by the Department into the linkage between staffing levels and service quality is the deterioration of utility performance in comparison to historical levels. The Department's SQ framework deals with this linkage effectively because the performance measures cover a range of utility activities, and therefore, allow the Department to first pinpoint whether there is a service-quality problem in a specific operational area and then to determine whether staffing levels *in that area* may have had an impact on the utility's performance on that particular measure. Without an indication that service-quality has deteriorated, there is no basis for the Department to conclude that staffing reductions are inconsistent with the statute because utilities are explicitly allowed to reduce staff where it is demonstrated that service-quality is not impaired.

Therefore, under the Department's existing framework, there is no need to "define what staffing levels are," or to determine whether it applies to union employees, employees of unregulated operations or all employees. The level of service quality provided by a utility is not necessarily a function of the number of people employed by the utility at any level or subdivision of the company. A company may reduce staff without causing the slightest change in the level of service provided to customers because, in practice, staffing levels and service-quality levels may be wholly unrelated. The Department's focus on first identifying a service-quality problem and then determining whether staffing levels in that area are a contributing factor to the service-quality problem obviates the need to determine whether the statute is referring to a particular category of employees.

---

[35] Interim Order at 3-4

Similarly, the Department's framework is an effective tool to address the fact that, over time, the staffing level existing as of November 1, 1997 will have little connection or relevance to the utilities' ongoing operations. Even in just the past seven years, the gas and electric distribution industries have experienced dramatic change as a result of the unbundling of utility services, asset divestitures, the implementation of technological improvements, the emergence of competitive markets and mergers and acquisitions. These events have caused fundamental changes in the structure of utility operations and have provided substantial opportunities for utilities to cut costs through staff reductions.[36] The Department's SQ Guidelines ensure that these changes occur without any detriment to customers in terms of service-quality levels.

Lastly, under the Department's structure, utilities are penalized if staffing reductions cause the level of service provided by the utility to fall below historical levels. This is important because "cause and effect" is the only basis for the Department to take action under the statute in relation to staffing levels. The statute does not suggest that the Department has authority to penalize companies for staff reductions below the November 1, 1997 level in the absence of a determination that those reductions have caused a service-quality problem, nor would it be reasonable to make such a suggestion. In fact, the statute explicitly allows staffing reductions after November 1, 1997, if those reductions do not affect service quality. The Department's existing penalty framework already incorporates an appropriate sanction for staffing level reductions that lead to deterioration in service-quality levels.

---

[36] For the most part, these reductions have been achieved through attrition and voluntary employee severance plans and not through actions by the utilities to cut staff.

Under the Department's existing framework, the focus is appropriately placed on the level of service currently provided by utilities and the comparison of those levels to performance benchmarks based on the utility's own historical service data. Accordingly, the Department has reasonably and appropriately incorporated the statutory mandate regarding staffing level benchmarks into the SQ Guidelines and no change is necessary or warranted in future guidelines.

4. Standardization of SQ Performance Benchmarks: *In D.T.E. 99-84, at 3-4, the Department required that LDCs collect any data that may be necessary for the Department to revisit, in the future, the issue of using benchmarks based on nationwide, region wide, or statewide data. The LDCs sent the Department a report on December 19, 2002 concluding that using the historical performance of each LDC on the respective performance measures remains the best method for establishing performance benchmarks. Summary of Findings Related To Service Quality Benchmarking Efforts, Navigant Consulting, Inc. (December 19, 2002). Please comment.*

There is an important distinction between the standardization of "performance measures" and the establishment of uniform or comparative "performance benchmarks." In terms of establishing the benchmark against which a utility's performance will be measured on a year-to-year basis, the findings of the Report submitted to the Department on December 19, 2002 by the gas and electric utilities remain applicable today, i.e., the historical performance of gas and electric companies operating in the Commonwealth is the best data available for the development of valid and appropriate performance benchmarks.

The overarching design of the Department's SQ framework is that it establishes a system to: (1) measure service quality; (2) assess whether, on a year-to-year basis, a utility is maintaining, improving or declining in relation to the expected (historical) level of service; and (3) penalize utilities that have not taken the actions necessary (and under their control) to maintain service quality at the levels customers expect.[37] Under this system, the establishment of valid and appropriate performance benchmarks is vital to the integrity of the overall SQ system because without valid benchmarks, there is no way to determine whether a utility's performance is actually improving, declining or staying the same – and in turn, no basis for the imposition of SQ penalties (or offsets).

In the *Summary of Findings Related To Service Quality Benchmarking Efforts* (Navigant Consulting, Inc.), filed with the Department on December 19, 2002 (the "Benchmarking Report"), the distribution companies provided the Department with a comprehensive evaluation of the potential for using national, regional or statewide data to establish uniform or comparative performance benchmarks across the utilities serving customers in the Commonwealth.[38] In the Benchmarking Report, the distribution companies detailed their efforts to review information from other state jurisdictions, federal agencies,[39] industry associations[40] and commercial data resources in order to determine whether there was any basis to establish performance benchmarks on something other than historical company-specific performance data.[41] The Benchmarking Report concluded that there are significant limitations in terms of the

---

37 Interim Order at 43-49

38 Benchmarking Report at 1-2

39 Benchmarking Report at 1-2

40 Federal agencies included the Department of Energy, the Department of Labor, the Federal Energy Regulatory Commission, and the Occupational Safety and Health Administration

41 Id. at 3-4, 7-12

validity and applicability of using national, regional and statewide data to establish uniform or comparative performance benchmarks.[42]

Specifically, the Benchmarking Report concluded that there are inherent differences among utilities in terms of data-collection methods, data quality, geography, distribution system design and configuration and weather impacts that make it virtually impossible to establish standardized performance benchmarks that would have validity in terms measuring (and penalizing) the performance of a specific Massachusetts-based utility.[43] These differences are significant because it is not possible to make comparisons among utilities if, for example, they are not computing the performance statistics in the same way or are not operating under the same economic, business and natural environments.[44] Similarly, a uniform benchmark is not appropriate where utilities are faced with differing operational, demographic and geographic challenges.[45]

None of these considerations have changed in the three years since the Department's ruling in D.T.E. 99-84. Although the Department and various industry groups have made progress in terms of the standardization of performance measures through the adoption of common definitions and data-collection practices, nothing has occurred since the filing of the Benchmarking Report to change the fact that the only feasible and analytically sound approach to evaluating a utility's performance is to compare its current performance to its past performance, as demonstrated in the Benchmarking Report.

---

42 Id. at 13-14, 16-22, 23-24.
43 Benchmarking Report at 13, 16-23
44 Id. at 16
45 Id. at 16-23.

Moreover, regional benchmarks would ignore a company's historical performance, the costs to achieve which are included in its rates. To the extent that regional or national benchmarks were more stringent than a Company's historic performance, then their establishment would require a company to improve its service quality performance contrary to the Department's stated objective for SQ plans, which is, to ensure that there is no degradation in service for companies operating under a performance based rate plan or merger rate plan. And, the utility would be denied the opportunity to recover the costs to achieve the improved service level until the expiration of its then effective rate plan and a subsequent base rate proceeding before the Department. Such a result would be unfair to the utility.

5. SQ Incentives: *Please comment as to whether any LDC should be allowed to collect incentives for SQ performance. MECo and Nantucket Electric Company (collectively "MECo"), are allowed to collect incentives back from ratepayers if it exceeds its benchmarks in the penalty provisions. The Department approved incentives as part of MECo's SQ plan because MECo's prior SQ plan, pursuant to Massachusetts Electric Company/Eastern Edison Company, D.T.E. 99-47, at 13, 31-32 (2000), contained penalty/reward structures, and in consideration of the potential benefits to ratepayers. D.T.E. 01-71B at 24 (2001).*

To the extent that the Department is seeking to encourage companies to improve service performance as opposed to merely ensuring that there is no degradation in the historical performance provided by the Company, then, the Department should consider the adoption of a symmetrical system of financial penalties and rewards as part of its SQ Guidelines for two main reasons: (1) the possibility of collecting a financial reward for

service-quality improvements will provide a strong incentive to utilities to move forward with service-related investments that benefit customers; and (2) the potential for a financial reward will offset the impact of penalties that may result where the utility is held to an ever-increasing performance benchmark during the term of a SQ plan. Moreover, it is well within the Department's authority to establish a symmetrical penalty and reward system should the Department determine that such a system would provide benefits to customers.

In Massachusetts Electric Company, D.T.E. 01-71B (2002), the Department approved an SQ plan that included the payment of financial incentives under certain circumstances.[46] In doing so, the Department noted that the financial incentive would provide the opportunity for the utility to "recover some of its costs" and, as a result, would encourage the company to make investments designed to improve service quality over time.[47] The Department's reasoning is on target because the availability of a financial reward will provide a strong impetus for utilities to improve performance over historical levels.

There are three main reasons that this incentive exists. First and foremost is that it takes substantial investment to achieve improvements in service quality in excess of the deadband threshold of one standard deviation. With most performance measures, the utility may be able to make smaller, less costly changes to produce marginal improvements in the level of performance historically achieved by the utility. However, it is generally impossible to achieve performance that is greater than one standard deviation over the historical level without purchasing a new information system,

---

46 D.T.E. 01-71B at 22

47 Id

installing new equipment or investing significant resources into distribution infrastructure and facilities. The availability of a financial reward would act to defray the cost of the investment required to achieve the service-quality improvement.

In that regard, the Department noted its concern in both D.T.E. 01-71B and D.T.E. 99-84 that a penalty/reward system would have the potential to motivate significant investment while producing only marginal benefits.[48] However, given the types and costs of system investments that are required to produce significant improvements in service quality, it is highly unlikely that even the maximum financial reward (under the Department's current structure) would go far in defraying the cost of the investment that a utility would be motivated to make solely because the reward is available.

A second reason that financial incentives would be beneficial is that there are instances where the utility may be put into a penalty position on a particular measure as a result of one-time operational changes or other singular events that are not outside the utility's control, but are also not the result of service degradations. In these cases, if the utility is able to collect a financial reward for improving service quality over historical levels, the utility will be much more likely to engage in one-time operational changes to improve service quality, although the changes may have the potential in to cause short-term setbacks in performance during the implementation phase. Currently, utilities are faced with a disincentive to make substantial changes that have the potential to disrupt performance because there is no basis for exclusion of this event from the service-quality performance metrics, and therefore, no way to recoup the penalty dollars even though service to customers may be improved in the future.

A common example of this dynamic is when a utility is considering the implementation, modification, of a new customer-service system, which is a highly complex, costly and somewhat unpredictable undertaking in terms of foreseeing all possible contingencies that could occur during implementation. Although the implementation or modification of a customer-service system requires significant investment, and will ultimately result in better service to customers, there is a strong potential for a utility to be penalized as a result of increased (and unavoidable) customer calls to the company during the implementation phase, which may place the utility in a penalty position. If the utility were provided the opportunity to gain a financial incentive for good performance following system implementation, the utility would have a strong incentive to make such investments. The financial incentive would be meaningful to the utility because (1) it would somewhat defray the cost of the system investment; and (2) it would offset the cost of any penalties incurred as a result of the implementation.

Lastly, like the offset provision, financial incentives would serve to counteract the operation of the Department's "rolling" benchmark system. As noted above, if the utility has less than 10 years of annual data available, new performance data is rolled into the historical average on a year-to-year basis until such time that 10 data points are incorporated into the benchmark.[49] With the continual incorporation of new performance data, it is possible that the benchmark will be raised above historical levels in circumstances where the utility has greatly improved its service after the commencement of the SQ Plan. With an ever-increasing benchmark, there is the potential that a utility could be penalized for service that falls below the new deadband threshold, but in fact, is

---

48 D.T.E. 01-71B at 23; D.T.E. 99-84 (Interim Order), at 45-46

49 SQ Guidelines at I.C

at a level that exceeds the level of service provided to customers at the outset of the PBR Plan. Financial incentives would provide an opportunity for the utility to offset penalties that may result from the rolling average.

Accordingly, the SQ Guidelines established by the Department should include the reasonable opportunity for utilities to be rewarded for service-quality performance in excess of historical levels. Moreover, because the financial reward system would be triggered only as a result of a demonstrated improvement in service, it is well within the Department's authority to allow the recovery of the financial reward. The Department's authority to set rates for customers to allow revenue recovery by the utilities is plenary. Customers would be the direct beneficiaries of any service improvements, and therefore, the establishment of a financial incentive is warranted and appropriate.

6. Customer Service Guarantees*: LDCs are currently required to pay $25.00 to any customer if they fail to meet a scheduled service appointment or fail to notify a customer of a scheduled outage. D.T.E. 99-84, at 38. Please discuss whether the future Guidelines should require (a) payment to customers whether or not the customer requests the credit; and (b) classification as a missed service appointment if the LDC contacts the customer within four hours of the missed appointment and re-schedules the appointment.*

A. Payment of Customer Service Guarantees

KeySpan currently makes payment of the $25 customer guarantee for missed appointments and planned outages whether or not the customer requests the credit. Accordingly, the Company has no objection to a requirement in future guidelines.

B. Classification of a "Missed Appointment"

In future SQ Guidelines, the Department should not require classification of a "missed" service appointment in instances where the distribution company has contacted the customer and rescheduled the appointment.

Given the complexities and competing service requirements involved in day-to-day scheduling of customer appointments, the company needs a level of flexibility to manage its operations. Where the company has encountered a service contingency and needs to reschedule an appointment with a customer, the company should not be required to count the appointment as "missed" because the company has, in fact, fulfilled its service commitment through coordination with the customer. If rescheduled appointments are classified as "missed appointments," the company could be faced with a situation where it is placed into a penalty position (and owes guarantee payments to customers), not because there is a decline in service, but because it has had to use available field resources to meet system requirements in areas other than routine service appointments. The end result of such a requirement would likely be for the Company to simply schedule fewer appointments thereby reducing the level of service offered to Customers but protecting itself from the imposition of otherwise unavoidable penalties. This is not a reasonable or appropriate result. Accordingly, the Department should not classify rescheduled appointments as "missed appointments" in future guidelines.

7. Property Damage: *The Department established a reporting requirement regarding losses related to damage of company-owned property as it was likely to contribute to assessing company safety performance. D.T.E. 99-84, at 17. Please*

*discuss whether this reporting requirement should be made a penalty measure in the future Guidelines***.**

The current requirement to report information regarding damage to company property should not be made a penalty measure in future Guidelines.[50] Currently, the gas companies report property-damage incidents involving damage to Company-owned facilities exceeding $5,000 per incident because the Department has determined that this information will assist in its review of service-quality performance. However, damage to company property is not necessarily indicative of a service-quality problem, nor is damage to company property susceptible to objective year-to-year comparisons in terms of quantifying and determining whether there has been a "decline" or "improvement" in the company's performance. Therefore, this data is not of the type that can provide a basis for a monetary penalty.

The Department has stated that service-quality measures first and foremost are "designed to prevent deterioration of the service quality ratepayers are entitled to receive."[51] To the extent that that there is a determination that customers have been denied service that they are due based on an analysis of quantifiable, objective data measuring service quality performance, customers "must then be made whole by a financial exaction from the utility for its delinquency."[52] The Department has further stated that the financial exaction is "conceptually akin to liquidated damages in contract

---

50 The Department has acknowledged previously that this type of data has not been required by other state public utility commissions to be reported as a service quality measure. D.T.E. 99-84, at 17, n.14 (citing 14 states other than Massachusetts that had adopted or pending service quality plans).

51 Interim Order at 43

52 Id

law."[53] Accordingly, the Department has recognized that service quality penalties are designed to be "damages" paid as if the company had breached a contract with its customers.

It is difficult to make the connection between the need to "make customers whole" for the "denial of service" and damage to company property. Damage to company property may occur as a result of a number of circumstances both within and outside the control of the company and, in many circumstances, there is no direct link between the company's service-quality performance and the damage caused to company property. In fact, in the majority of cases, the damage is caused by third party contractors, over whom the Company has no authority or control, that damage the Company's pipes during construction activity.

Moreover, there are currently in place a comprehensive set of federal and state laws, rules and regulations regarding the reporting of incidents and accidents involving natural gas. Both the Department, through its Pipeline and Safety Engineering Division and the U.S. Department of Transportation have well-developed systems in place to investigate these reports and, where appropriate, through the NOPV process to levy fines or penalties on the Company. Thus, there is no need for a duplicative penalty mechanism in the SQ Guidelines.

8. Line Loss: *In D.T.E. 99-84, at 18, the Department acknowledged that an electric distribution company may experience percentage variations in line losses from year to year unrelated to SQ degradation. Please discuss whether line losses should be made a reporting requirement in the future Guidelines.*

---

[53] Id. at 44

As a practical matter, the companies do not object to the Department's existing requirement that line losses (or unaccounted for gas) be reported as part of the annual service-quality reports. The companies have been providing this information to the Department under the current guidelines, as well as to other regulatory authorities in FERC Form 1 and Department of Transportation reports, and the tracking and reporting of this information places no significant administrative burden on the companies.

However, the question correctly recognizes that line losses (and unaccounted for gas) are generally unrelated to the utility's service-quality performance. The Department acknowledged this in D.T.E. 99-84, noting that: (1) much of the annual variation in line losses from year to year stems from the effects of electrical load on a system; and (2) that the amount of load on a system is not entirely within the control of electric companies.[54] Accordingly, eliminating this reporting requirement from future SQ guidelines would be consistent with maintaining the integrity of the Department's service quality policy as one which holds electric and gas companies accountable only for those operational areas that are within their control.

IV KEYSPAN SHOULD BE ALLOWED THE OPORTUNITY TO PRESENT A CONSOLIDATED SQ PLAN TO THE DEPARTMENT

Currently, KeySpan's service quality performance is separately measured for each of the KeySpan Massachusetts LDCs, Boston Gas Company, Colonial Gas Company and Essex Gas Company. This methodology for measuring the Company's performance fails to recognize the significant operating efficiencies achieved by KeySpan since the merger of Eastern Enterprises with KeySpan Corporation in November of 2000. Going forward,

KeySpan recommends that those LDCs that operate within a holding company structure, such as the KeySpan LD's, be allowed to combine the operations of the individual LDCs into a single SQ Plan for purposes of measuring the quality of service provided to customers. It would be incumbent upon KeySpan, or any other LDC proposing such a combined SQ Plan, to demonstrate that sufficient data for the combined performance exists to properly measure historical performance and that the benchmarks established for the combined performance will not result in degradation of service to customers. KeySpan believes it can meet that burden and accordingly, commencing with Calendar year 2006, will propose for the Department's consideration a single SQ plan for Boston Gas Company, Colonial Gas Company and Essex Gas Company.

On November 8, 2000, KeySpan Corporation completed its merger with Eastern Enterprises, thereby acquiring the local gas distribution operations of Boston Gas Company, Colonial Gas Company and Essex Gas Company.[55] Since that time, KeySpan has worked to integrate its operations so as to achieve as many operational synergies and efficiencies as possible. For instance, on January 30, 2003, the Department approved KeySpan's 2001-2006 Long Range Resource and Requirements Plan (the "Supply Plan").[56] In the Supply Plan, the Company presented a single forecast of the Company's combined sendout requirements under design conditions. In the Supply Plan, the Company demonstrated that its resource planning activities are fully integrated with a single forecasting procurement and supply management and dispatch process. Subsequently, on December 9, 2004 the Department approved a consolidated Cost of Gas

---

54 Id

55 KeySpan also acquired the New Hampshire local gas distribution operations of EnergyNorth Natural Gas, Inc.

56 KeySpan Energy Delivery New England, D.T.E. 01-105 (2003)

Adjustment Factor for the KeySpan LDCs[57] that recognized that the resources within the Company's portfolio are used interchangeably to meet combined customer requirements on the KeySpan distribution system and that consolidation of the tariff appropriately reflected the manner in which the Company's gas supply resources are managed to serve all customers.

With regards to the SQ performance measures, the Company has similarly aligned its business processes such that all available resources are utilized to serve customers regardless of where on the distribution system they reside. For example, the Company does not maintain separate call centers for each individual LDC. Rather, the Company has two call center locations serving its Massachusetts customers each capable of handling customer calls regardless of their point of origin. This ensures that our Massachusetts customers' calls are handled as efficiently as possible by directing calls to the first available call center representative. This capability improves customer satisfaction by reducing customer wait time and increasing service levels during peak call volume periods. Also, the Company maintains a central dispatch location from which all odor calls are responded to and through which all requests for service appointments are made. Accordingly, it is no longer necessary or reasonable to maintain separate customer service benchmarks by LDC. A combined benchmark will more appropriately reflect the

57 KeySpan Energy Delivery New England, D.T.E. 04-62 (2004)

performance being provided by the Company through out its service territory. And, with a single benchmark to achieve, the Company can more effectively and efficiently manage its resources to achieve its performance objectives.

Respectfully Submitted,
KeySpan Energy Delivery New England
By its attorney

Thomas P. O'Neill
Senior Counsel
52 Second Avenue
Waltham MA. 02451
(781) 466-5136

March 1, 2005